

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Revision No.857 OF 2006

Date of Decision: May 14, 2007

MOOL SINGH

.....PETITIONER

VERSUS

SHAKUNTALA DEVI & OTHERS

.....RESPONDENT(S)

. . .

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

PRESENT: - Mr. K.K. Gaind, Advocate, for the
petitioner.

Mr. Sudhir Sharma, Advocate, for
the respondents.

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A.N.JINDAL, J

This revision petition arises out of an order dated 25.08.2005 passed by Additional Civil Judge, Senior Division, Khanna, accepting the application under Order 9 Rule 13 CPC filed by the tenants respondents and for setting aside the Order dated 10.05.1999.

Factual matrix of the case is that an exparte order for ejectment was passed on 10.05.1999. in Rent Application No. 57 of 27.10.1997 against the tenants respondents. It was pleaded in the application filed by the tenant against Hukam Chand contains allegations that he had tendered the rent on 6.01.1998

and case was adjourned to 19.01.1998. On the assurance of the court he need not to appear on the next date of hearing i.e. 19.01.1998 as it was a formal date and the petition was, just to be withdrawn by the landlord on that day, petitioner (hereinafter referred to as, 'the petitioners') did not appear but to his surprise, when on 01.10.1999 the petitioners tried to dispossess Hukam Chand, he made inquiry and came to know that petitioner had obtained an exparte decree against him by playing fraud upon him and upon the Court. Thus he challenged the exparte proceedings initiated against him and the order for setting aside the exparte order of ejectment dated 10.5.1999. After 6 years of protracted trial, the Additional Civil Judge vide order dated 25.08.2005, however, court while accepting the application returned the finding of fact that the applicant was prevented by sufficient cause for not appearing on the date fixed, and that there were sufficient grounds to set aside the exparte order of ejectment.

Having scrutinised the impugned order, the ejectment petition was filed merely on the ground of non-payment of rent. Respondent Hukam Chand (now deceased) having tendered the rent left interest in the petition, on the assurance given by the Court, that the petition was merely on the ground of non payment of rent and on payment of rent it was to be withdrawn on 19.01.1998. However, the petitioner, for best reasons known to him, did not withdraw the petition, led exparte evidence and obtained this exparte order.

Respondent Hukam Chand was not beneficiary for absenting himself before the Rent Controller. The evidence led by him speaks to the volumes that he was caught unaware and was prevented by sufficient cause from appearing and there was no negligence or inaction on his part for withdrawing himself from the proceedings of the Court. It is also well settled by now that principle of audi alteram partem prevails and no party should be condemned unheard. The meritorious claims should not be thrown away without hearing the aggrieved, especially, when the party concerned was not going to be benefited for not appearing in the case. Since the instant petition, in which he was proceeded exparte was merely on the ground of non payment of rent and after tendering rent he must have not attended the Court on the next date on the assurance that the petition will be withdrawn. No substantial question of law arises in this case nor the petitioner has raised such question before me.

Consequently finding no merit in the revision petition, the same is hereby dismissed.

May 14, 2007
Ruchika

(A.N.JINDAL)
JUDGE